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5 Attorneys for Defendant
County of Lake

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 DALLAS WOLL,
12 Plaintiff,
13 v.
14 COUNTY OF LAKE, MARY JANE
FIGALDE, and HENRY BOUILLERCE,
15 Defendants.

Case No. CV 07 6299 BZ

(Unlimited Civil Case)

Hon. Magistrate Bernard Zimmerman

**DEFENDANT COUNTY OF LAKE'S
AMENDED ANSWER TO COMPLAINT**

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18 Comes now Defendant County of Lake in response to plaintiff's complaint and amends its
19 answer as follows.

20 **GENERAL RESPONSE TO PARAGRAPHS**

21 **1 through 15, Inclusive**

22 **JURISDICTION**

23 1. The County denies the applicability of Title 42 of the United States Code §1983 due to
24 lack of information and knowledge sufficient to form a belief. Defendant admits that defendants
25 reside in this Judicial District.

26 **PARTIES**

27 2. The County denies the allegations of paragraph 2 based upon a lack of information and
28 knowledge sufficient to form a belief.

1 3. The County admits the allegations of paragraph 3.

2 4. The County denies the allegation that Mary Jane Figalde is an employee of the Lake
3 County Community Development and denies the remaining allegations of paragraph 4 for lack of
4 information and belief.

5 5. The County denies, generally and specifically, the allegations of Paragraph 5 except for
6 the allegation that said parcel is located in an unincorporated area of the County of Lake, at 6585
7 Jacobsen Road, Kelseyville, California.

8 6. The County admits that the Lake County Community Development Department recorded
9 a Notice of Nuisance on December 16, 2005 but denies, generally and specifically, the remaining
10 allegations of the first sentence of Paragraph 6. The County denies, generally and specifically, the
11 remaining allegations of Paragraph 6 for lack of information and belief.

12 7. The County denies, generally and specifically, the allegations of Paragraph 7.

13 8. The County denies, generally and specifically, the allegations of Paragraph 8.

14 9. The County denies, generally and specifically, the allegations of Paragraph 9.

15 10. The County denies, generally and specifically, the allegations of Paragraph 10.

16 11. The County denies, generally and specifically, the allegations of Paragraph 11.

17 12. The County denies, generally and specifically, the allegations of Paragraph 12.

18 13. The County denies, generally and specifically, the allegations of Paragraph 13.

19 14. The County denies, generally and specifically, the allegations of Paragraph 14.

20 15. The County denies, generally and specifically, the allegations of Paragraph 15.

JURY TRIAL DEMANDED

22 The County likewise demands a trial by jury.

AFFIRMATIVE DEFENSES

24 AS AND FOR A SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to the
25 complaint, this answering defendant alleges that the complaint fails to state facts sufficient to
26 constitute a cause of action against any of said defendants.

27 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
28 the complaint, this answering defendant alleges that should plaintiff recover damages against it, this

1 answering defendant should be entitled to have the amount reduced or eliminated to the extent that
 2 plaintiff's negligence and/or fault caused the damages herein.

3 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 4 the complaint, this answering defendant alleges that plaintiff assumed the risk of the matters referred
 5 to in the complaint and that he knew and appreciated the nature of the risk, and that he voluntarily
 6 accepted the risk.

7 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 8 the complaint, this answering defendant alleges that the sole and/or partial proximate cause of the
 9 damages claimed was due to the negligence of co-defendants, and other persons, firms or entities not
 10 specifically named in the complaint.

11 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 12 the complaint, this answering defendant alleges that in the event it is held liable to plaintiff, which
 13 liability is expressly denied, and the co-defendants or other persons, firms or entities not specifically
 14 named in the complaint, are likewise held liable, this defendant is entitled to percentage contribution
 15 of the total liability from said co-defendant and/or unnamed parties in accordance with the principals
 16 of equitable indemnity and comparative contribution.

17 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 18 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
 19 times mentioned in plaintiff's complaint, this defendant acted in good faith with the reasonable belief
 20 as to the lawfulness of its actions.

21 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 22 the complaint, this answering defendant alleges that should plaintiff recover damages against
 23 defendants, or any of them, this defendant should be entitled to have the amount reduced or
 24 eliminated to the extent that plaintiff failed take reasonable steps to mitigate those damages.

25 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 26 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
 27 times mentioned in plaintiff's complaint, the actions of this defendant was privileged under the
 28 surrounding circumstances.

1 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 2 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all
 3 times mentioned in plaintiff's complaint the actions of the defendants, and each of them, were based
 4 exclusively upon bona fide law enforcement considerations with a reasonable belief that their actions
 5 were lawful, and as such they are protected by the qualified immunity privilege.

6 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 7 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff
 8 failed to exhaust administrative remedies.

9 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 10 the complaint herein, and each claim for relief thereof, this answering defendant alleges that, to the
 11 extent the allegations made against this answering defendant by plaintiff's attempt to enlarge upon the
 12 facts, contentions, or theories set forth in his respective claims heretofore presented to defendant, said
 13 complaint is in violation of Government Code Sections 900, et seq., and defendant expressly reserves
 14 the right to move to strike any and all such allegations and to object to the admission of any evidence
 15 directed to the proof thereof.

16 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 17 the complaint herein, this answering defendant alleges that it is immune from liability pursuant to the
 18 provisions of Government Code §§815 through 856.6, inclusive, §§900 through 913.2, inclusive, and
 19 §§950 through 951, inclusive.

20 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 21 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff
 22 had full knowledge of the risks involved in the illegal activity in which he was engaged; that plaintiff
 23 voluntarily assumed all the risks incident to the activity engaged in at the time and place mentioned in
 24 the complaint; and that the loss or damage, if any, sustained by plaintiff was caused by said risks
 25 which were accepted and voluntarily assumed by plaintiff when he engaged in said activities.

26 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 27 the complaint herein, and each claim for relief thereof, this answering defendant alleges that any
 28 injuries suffered by plaintiff were caused by supervening events over which this defendant had no

1 control.

2 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 3 the complaint herein, and each claim for relief thereof, this answering defendant alleges that by way
 4 of a plea of comparative negligence, plaintiff was negligent in and about the matters and activities
 5 alleged; that said negligence contributed to and was a proximate cause of plaintiff's alleged injuries
 6 and damages, if any, or was the sole cause thereof; and if plaintiff is entitled to recover damages
 7 against defendant by virtue of this complaint, defendant prays that the recovery be diminished or
 8 extinguished by reason of the negligence of the plaintiff in proportion to the degree of fault
 9 attributable to him.

10 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to
 11 the complaint, this answering defendant alleges that, to the extent that plaintiff's civil rights were not
 12 violated, no cause of action for violation of plaintiff's civil rights will lie.

13 WHEREFORE, the County prays as follows:

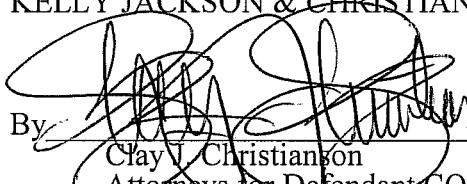
14 1. That plaintiff take nothing by reason of said complaint.

15 2. That this answering defendant be awarded reasonable attorney's fees, costs of suit and
 16 such other and further relief as the Court deems just.

18 Dated: March 4, 2008

KELLY JACKSON & CHRISTIANSON, LLP

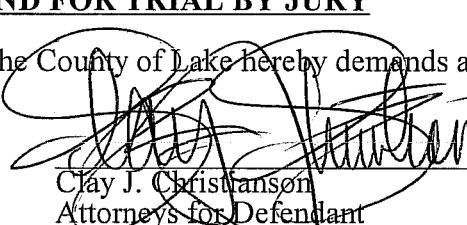
By _____


Clay J. Christianson

Attorneys for Defendant COUNTY OF LAKE

DEMAND FOR TRIAL BY JURY

24 By way of endorsement hereon, the County of Lake hereby demands a trial by jury.


Clay J. Christianson
Attorneys for Defendant
County of Lake

28 ////

1 SIGNATURE ATTESTATION
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4 I attest that I have on file all holograph signatures for any signatures indicated by a conformed
5 signature (/s/) within this e-filed document.
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10 Clay J. Christianson
11 Attorneys for Defendant
12 County of Lake

1 Case No. CV 07 6299 BZ

U.S. District Court - Northern District

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3 **PROOF OF SERVICE BY MAIL**
 [FRCivP 5(b)]4
5
6 I am employed in the County of Sonoma, California. I am over the age of eighteen years and
not a party to the within entitled cause; my business address is 90 South E Street, Suite 310, Santa
Rosa, California 95404. I am readily familiar with my employer's business practice for collection and
processing of correspondence for mailing with the United States Postal Service, such correspondence
would be deposited with the United States Postal Service that same day in the ordinary court of
business.

7 On the date of execution of this declaration, I served the attached:

8 **DEFENDANT COUNTY OF LAKE'S AMENDED ANSWER TO COMPLAINT**

9 on the interested parties in said cause, addressed as follows:

10 Frear Stephen Schmid, Esq.
11 177 Post Street, Suite 890
12 San Francisco, CA 9410813 *Attorney for Plaintiff Dallas Woll*
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15 (415) 788-5958 Fax16 _____
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